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## Constitutional Paradox: Ethno-federal Consociationalism and Refugee Return in post-Dayton Bosnia-Herzegovina<sup>2</sup>

**Abstract:** *In 1995, the peace agreement for the conflict in Bosnia-Herzegovina became one of the latest examples of consociational theory being utilised as a method of conflict management governance in deeply divided societies. Drawing from the work of Arend Lijphart, the Dayton Peace Accord established the institutional design of the future state, which subscribed to the notion that inter-ethnic co-operation is most likely to occur within an ethno-federal power sharing arrangement. This article examines the paradox between the establishment of ethno-federal entities, as a consociational requirement of post-conflict Bosnia-Herzegovina, and the integral importance of refugee returns to pre-war multi-ethnic regions, as stated in Annex VII of the General Framework Agreement for Peace in Bosnia and Herzegovina (GFAP). Rather than simply advocating integrative institutional design as an alternative solution, the experiences of minority refugee returnees in Bosnia-Herzegovina highlight the problematic relationship between the everyday predicaments of displaced individuals, and the implementation of high political theory. This article argues that the reality of refugee returns in Bosnia-Herzegovina has done little to challenge the ethno-federalist features of the GFAP, and thus has not met the expectations of those aiming to successfully achieve the “re-mixing” of ethnic groups.*

**Keywords:** *Consociationalism, ethno-federalism, refugee returns, Bosnia-Herzegovina, Dayton Peace Accord, conflict management, reintegration, post-conflict*

In 1995, Bosnia-Herzegovina became one of the latest examples of consociational theory being utilised as a method of conflict management governance in deeply divided societies. The internationally-brokered Dayton Peace Agreement (DPA) were signed by the leaders of the conflicted Bosniak, Croat and Serb forces, which established the new constitutional design for a multi-ethnic state of Bosnia and Herzegovina, where all three groups would

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2 I would like to thank Benedikt Harzl and the two anonymous reviewers for their valuable comments on this paper.

be represented equally across all levels of institutional governance. Drawing from the scholarly work of Arend Lijphart, the *General Framework Agreement for Peace in Bosnia and Herzegovina* (GFAP) established the institutional design of the future state, of which one major consequence was the division of the state into two separate entities, the Federation of Bosnia-Herzegovina (FBiH) and the Republika Srpska (RS), which were structured on the basis of constituent peoples as power-sharing partners, and predominantly homogenous municipalities. However, the same peace agreement also prioritised the establishment of a multi-ethnic state, and the swift return to their pre-war homes of the approximately 2 million people displaced by the conflict,<sup>3</sup> in order to counteract the results of widespread ethnic cleansing. This was addressed in Annex VII of the GFAP, which stated that,

“[a]ll refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.”<sup>4</sup>

This article examines the paradox between the establishment of ethno-federal entities, as a consociational requirement of post-conflict Bosnia-Herzegovina, and the integral importance of refugee returns to pre-war multi-ethnic regions, in a singular case study. Rather than simply advocating integrative institutional design as an alternative solution to this constitutional paradox, the experiences of minority refugee returnees in Bosnia-Herzegovina highlight the problematic relationship between the everyday predicaments of displaced individuals, and the implementation of high political theory. Drawing from alternative approaches of understanding re-integration, this article argues that the reality of refugee returns in Bosnia-Herzegovina has done little to challenge the ethno-federalist features of the GFAP, and thus has not met the expectations of those aiming to successfully achieve

3 International Crisis Group, “The Continuing Challenge of Refugee Return in Bosnia and Herzegovina,” *Europe Report* No. 137 (December 2002): 1, <http://www.crisisgroup.org/en/regions/europe/balkans/bosnia-herzegovina/137-the-continuing-challenge-of-refugee-return-in-bosnia-herzegovina.aspx>

4 See Annex VII, *Dayton Peace Agreement, General Framework Agreement for Peace in Bosnia and Herzegovina*, November 21 1995, accessed January 18 2014, <http://www.state.gov/p/eur/rls/or/dayton/52592.htm>.

the “re-mixing”<sup>5</sup> of ethnic groups. This interpretation of the Bosnian case raises further questions regarding the reliance on consociational theory for managing post-conflict peace settlements, and how the peace and security of victims of conflict is addressed through these mediums.

### Consociationalism and Ethno-Federalism in Divided Societies

Consociationalism was first developed in the 1960s as a political theory by Arend Lijphart, who argued that the most effective way to democratically govern a society fragmented by entrenched competing identities or segments, such as religious, linguistic, “ethnic” and others,<sup>6</sup> was through a form of institutionalised power-sharing. Lijphart also argued that “it may be desirable to keep transactions among antagonistic subcultures in a divided society – or, similarly, among different nationalities in a multinational state – to a minimum.”<sup>7</sup> This understanding of inter-group interaction shapes the institutional design of a democratic non-majoritarian state, structured around four key pillars; a grand coalition; a proportional representation electoral system; a mutual veto system, and group autonomy.<sup>8</sup>

It is the group autonomy pillar that this article is concerned with, and in particular the use of territorial governance in a federal system. Although group autonomy is often mentioned in relation to institutional control over public policies such as education or cultural rights, Christopher McCrudden and Brendan O’Leary make the distinction that community autonomy in a consociation simply means that “each group has a great deal of internal self-government in at least one public function.”<sup>9</sup> This ethno-territorial autonomy is more commonly referred to as “ethno-federalism”, which can be defined as a “federal political system in which component territorial governance units are

5 Rebecca Brubaker, “From the unmixing to the remixing of peoples: UNHCR and minority returns in Bosnia,” *New Issues in Refugee Research*, Research Article No. 261 (August 2013). <http://www.unhcr.org/520a4ccf9.html>.

6 Defined by Ian Lustick as a society in which “ascriptive ties generate an antagonistic segmentation of society, based on terminal identities with high potential salience, sustained over a substantial period of time and a wide variety of issues...” and membership is “clear” and “unchangeable”. Ian Lustik, “Stability in Deeply Divided Societies: Consociationalism Versus Control,” *World Politics* 31 (1979): 325, doi: <http://dx.doi.org/10.2307/2009992>.

7 Arend Lijphart, “Consociational Democracy,” *World Politics* 31 (1969): 220–221, doi: <http://dx.doi.org/10.2307/2009820>.

8 James G. Kellas, *The Politics of Nationalism and Ethnicity* (New York: St. Martin’s Press, 1998), 179.

9 Christopher McCrudden and Brendan O’Leary, “Introduction,” in *Courts and Consociations: Human Rights Versus Power-Sharing*, eds. Christopher McCrudden and Brendan O’Leary, 5–7 (Oxford: University of Oxford Press, 2013).

invested with ethnic content”<sup>10</sup> and is clearly visible in the institutional design of the GFAP. Although consociationalism was not originally conceptualised by Lijphart for application to post-conflict situations,<sup>11</sup> nonetheless, variations on the institutional embodiment of consociational governance can also be found in post-conflict<sup>12</sup> peace agreements in Northern Ireland, Belgium, Burundi, Macedonia, Iraq, Kenya, Cyprus and Lebanon, with the degree of ethno-territorialisation varying from case to case. These cases are the subject of a vast number of studies which scrutinise the successes and failures of consociational design in each divided society, all of which have implications for the future development of the theory. This is especially true when leading scholars of consociational approaches also hold advisory roles in supranational governance institutions, and when policy makers or legal practitioners use their experiences to contribute to scholastic texts discussing approaches of post-conflict governance. These practices demonstrate the dynamic relationship between scholars and practitioners of consociational theory, and thus the potential of everyday experiences in consociational systems to influence the way in which it is analysed and debated at a theoretical level.

### Constitutional Paradox in the Dayton Peace Agreement

Consociationalist theory, the “consociational confederation”<sup>13</sup> components of the GFAP, and the institutional design of Bosnia-Herzegovina have all come under academic scrutiny since the DPA was signed, some of which has raised concern over the limits of re-integration which such an approach offers.<sup>14</sup> Whilst consociationalist arrangements are intended to be a transitory stage from the cessation of violence to more integrative, post-conflict institutional design, one concern regarding the Bosnian case is the use of ethno-

10 Henry Hale, “The Double-Edged Sword of Ethnofederalism: Ukraine and the USSR in Comparative Perspective,” *Comparative Politics* 40 (2008): 294, doi: <http://www.jstor.org/stable/20434083>.

11 Rob Aitkin, “Consociational Peace Processes and Ethnicity: The implications of the Dayton and Good Friday Agreements for Ethnic Identities and Politics in Bosnia-Herzegovina and Northern Ireland,” in *The Challenges of Ethno-Nationalism: Case Studies in Identity Politics*, ed. Adrian Guelke, 232 (Basingstoke: Palgrave Macmillan, 2010).

12 Although peace settlement is used here to describe agreements signed by all parties to a conflict, in order to end hostilities, the “post” aspect of the term aims to reflect the fact that these agreements can become or contain key constitutional design features of the post-conflict political system.

13 McCrudden and O’Leary, “Introduction,” 9.

14 See Aitkin, “Consociational Peace Processes and Ethnicity,” 232–253; Joel Selway and Kharis Templeman, “The Myth of Consociationalism? Conflict Reduction in Divided Societies,” *Comparative Political Studies* 45 (2012): 1542–1571, doi: 10.1177/0010414011425341, and Sumantra Bose, “The Bosnian State a Decade after Dayton,” *International Peacekeeping* 22 (2005): 327, doi: 10.1080/13533310500074028.

federal features within a society where homogenisation of territory through the mass displacement of civilians was a targeted aim of war. The conflation of territory with ethnic identity through violence in Bosnia-Herzegovina has been conceptualised as a “house war”, in which “the politics of house and home played a central role, instrumentally as well as ideologically, in causing mass flight and making irreversible the effects of ethnic cleansing.”<sup>15</sup> It is widely documented that the conflict between 1992 and 1995 was characterised by extreme violence, ethnic cleansing and sexual assault, which was conducted in the pursuit or name of ethno-nationalist agendas to divide the former Yugoslavia along ethnic lines. One result of this was the displacement of at least half the pre-war population, with the displaced divided between the one million citizens who fled abroad to neighbouring countries and further afield, and one million people remaining internally displaced.<sup>16</sup>

It is with this challenge to peacemakers that a crucial contradiction between territorial ethno-federalism, and the issue of refugee returns can be identified within the GFAP. According to the architects of the DPA, its goals were both the permanent cessation of violence and “an agreement for a multi-ethnic state,”<sup>17</sup> and subsequently a defining feature of the DPA was the establishment of the two separate entities within the state, which both embodied the consociational principles of power-sharing elite cartels, and predominantly ethnically-homogenous municipalities. However, concerns regarding the legitimisation of ethnic boundaries shaped through violence, contributed to the necessary inclusion of a stringent refugee returns policy,<sup>18</sup> which established and emphasised the right of all displaced persons to return to their pre-war homes. The ensuing contradiction was identified by in the immediate post-conflict period by Madelyn D. Shapiro, who argued that the “individual choice given to refugees regarding whether to return or relocate could, however, destroy the very ethnic separation between the Federation and Republika Srpska recognized by the Dayton Accords.”<sup>19</sup> This paradox is especially evident in the case of minority returns, which although not explicitly stated in Annex VII, was deemed a priority for international actors such as United Nations High Commission for Refugees (UNHCR).

15 Anders H. Stefansson, “Home in the Making: Property Restitution, Refugee Return, and Senses of Belonging in a Post-war Bosnia Town,” *International Migration* 44 (2006): 118, doi: 0.1111/j.1468-2435.2006.00374.

16 Carl Dahlman and Gearóid Ó Tuathail, “Broken Bosnia: The Localized Geopolitics of Displacement and Return in Two Bosnian Places,” *Annals of the Association of American Geographers* 95 (2005): 644, doi: 10.1111/j.1467-8306.2005.00479.x.

17 Richard Holbrooke, *To End a War* (New York: The Modern Library, 1999), 232.

18 OSCE Mission to Bosnia and Herzegovina, *1995-2005: 10 Years Report* (Sarajevo: OSCE BiH, 2005), 109.

19 Madelyn D. Shapiro, “The Lack of Implementation of Annex 7 of the Dayton Accords: Another Palestinian Crisis?,” *American University International Law Review* 14 (1998): 567.

Following the creation of ethnically-designated federal entities, returns in Bosnia-Herzegovina were categorised as being either majority, where “return of individuals to areas in which they make up part of the ethnic majority,” or minority, which was “the return of individuals to areas in which they constitute an ethnic minority”.<sup>20</sup> Thus, by using the demographic distribution of 1991 as the benchmark of origin, when most municipalities in Bosnia and Herzegovina were still fairly ethnically heterogeneous, Annex VII aimed not only to promote the individual human right to return, but also to reverse the ethnic cleansing of territory into homogenous units.<sup>21</sup>

It is this contradiction between conditions for the success of consociational peace agreements, in that it is beneficial for ethnic groups to remain separated and homogenous in the immediate post-conflict period, and the real-life practise of an individual choosing to return to their home of origin, that this article now turns to. The DPA has been described as having a degree of flexibility in which the possibilities of institutional change offer a transformative capacity for Bosnian society,<sup>22</sup> and the remainder of this article traces changes made since 1995 which have attempted to shift the constitutional design from one of segregation to a more integrated, multi-ethnic state. By doing so, it explores how the international actors have attempted to address this contradiction, and whether integrative institutional reforms have encouraged successful minority returns, thus addressing Shapiro’s original concerns regarding refugee policy in Bosnia-Herzegovina.

### Observing Institutional Change in Bosnia and Herzegovina

It is possible to isolate some key moments for the development of the DPA during the two decades since its implementation, in which fundamental changes have been made to the constitutional design that mark a shift away from ethno-federalism. The first major move to reduce the degree of ethno-homogeneity in the institutional design was the Constitutional Court decision in the “Constituent Peoples” case in 2000, which declared that the DPA only provided equal status for all three constituent peoples to participate at the state level of governance, but not at the entity level. The judgement required that the prelude to the constitution of the RS was changed from one of an ethnic Serb territory, to one which reflected the equal right of all individuals to reside there and participate in its governance, whilst the Federation was also adjusted

20 Brubaker, “From the unmixing to the remixing of peoples,” 2.

21 Brubaker discerns this intent, also widely speculated by other scholars, through interviews with officials involved in drafting the DPA. Brubaker, “From the unmixing to the remixing of peoples,” 2.

22 Marc Weller and Stefan Wolff, “Bosnia and Herzegovina ten years after Dayton: Lessons for internationalized state building,” *Ethnopolitics* 5 (2006): 3, doi: 10.1080/17449050600579559.



to emphasise the role that Bosnian Serbs had in the political structures of the entity. Importantly, the judgement also required that “special attention would have to be paid at the sub-entity level to *avoid ethnic homogenisation of cantons or municipalities*”.<sup>23</sup> This decision was declared as effectively “de-ethnicizing” both federal entities, and paving the way for reintegration, but in practice has led to minimal changes in the workings of governance at the entity level. Violation of the court’s decision by the Republika Srpska National Assembly in 2002 demonstrated the strength of opposition to attempts at reducing ethno-nationalist elite control at any level of governance, and sent a clear signal to displaced peoples wishing to return to the RS that such reintegration was not welcomed by the entity.

To date, the case has been the only attempt which has resulted in considerable institutional re-design away from consociational principles. Despite the victory of Dervo Sejdić and Jakob Finci at the European Court of Human Rights in 2006,<sup>24</sup> regarding the ability of non-constituent peoples or “Others” to stand in elections for the ethnically-allocated Presidency, this decision continues to be contested by domestic actors, with the Court’s ruling yet to be implemented. There is also a long history of failed attempts to come to meaningful agreements at internationally brokered talks, such as the unsuccessful “Butmir Process” in 2009, whilst institutional engineering at the local level has produced mixed results, and tended to be less successful at producing multi-ethnic governance units in municipalities with high degrees of complex consociationalism and territorial division.<sup>25</sup> The lack of genuine institutional change from ethno-federalist governance structures to those which encourage re-integration and multi-ethnicity, should not necessarily be interpreted as a failure of an integrationist approach. Rather, it is an indication of how consociational design makes it possible in practice for elites to use ethno-territorial governance to protect their individual power, and that they will resist both constitutional and diplomatic attempts to reduce this.

23 Jens Woelk, “Bosnia-Herzegovina: Trying to Build a Federal State on Paradoxes,” in *Constitutional Dynamics in Federal Systems: sub-national perspectives*, eds. Michael Burgess and Alan Tarr, 130 (Montreal & Kingston, London, Ithaca: McGill-Queen’s University Press, 2012).

24 For details of the case see Council of Europe Office in Belgrade, “Sedić and Finci v. Bosnia and Herzegovina,” accessed January 10 2014, [http://www.coe.org.rs/eng/news\\_sr\\_eng/?conid=1545](http://www.coe.org.rs/eng/news_sr_eng/?conid=1545).

25 Florian Bieber, “Local Institutional Engineering: A Tale of Two Cities, Mostar and Brčko,” *International Peacekeeping* 12 (2005): 420–433, doi: 10.1080/13533310500074523.



## Facilitating Minority Returns

The process of minority returns and the implementation of Annex VII has received a mixed response, with the current analysis from UNHCR claiming that of the 1,030,392 displaced individuals who have returned to locations within Bosnia and Herzegovina, 470,835 returned to their place of origin in which they constitute a national minority.<sup>26</sup> The majority of these returns were recorded in the first three years following the signing of the DPA, but there was a marked surge in the rate of return in 2002 and 2003. This is attributed to the “accelerated and effective implementation of property laws, which resulted in the restitution of housing units to their pre-war owners... thus creating conditions for a significant number of refugees and displaced persons to return to their homes.”<sup>27</sup> The Property Law Implementation Plan (PLIP) was part of a revised strategy by the international community, concerned that the slowing rate of returns would hinder the achievement of the “early returns priority” aspect of Annex VII, and fail to address their concerns regarding the legitimization of ethnically cleansed territories by the DPA. The implementation of legislation to increase the rate of minority returns can be viewed as a form of institutional engineering to make the state more integrative through legislation.

Although the link between the PLIP and the surge in minority refugee returns is cited by officials as an indication that re-integration, and thus heterogeneous municipalities, are being achieved, this requires further investigation. Reintegration can be observed when municipalities as political units have become heterogeneous once again, and there has been a restoration of inter-ethnic relations and participation throughout institutions of governance. However, for UNHCR, the organisation charged with the process of refugee returns, reintegration means the “universal enjoyment of full political, civil, economic, social and cultural rights.”<sup>28</sup> This broad definition has been broken down into a conceptual framework by Alastair Ager and Alison Strang, for whom the ability of refugees to integrate is founded on rights and citizenship, before expanding to basic facilitators of language and safety, social bonds and connections, and finally, employment, housing, education, and health.<sup>29</sup> There

26 UNHCR in Bosnia and Herzegovina, *Statistics Package*, December 31 2012, accessed February 10 2014, [http://unhcr.ba/wp-content/uploads/2013/04/SP\\_12\\_2012.pdf](http://unhcr.ba/wp-content/uploads/2013/04/SP_12_2012.pdf). The statistics package for 2013 has yet to be published at the time of writing.

27 Ministry for Human Rights and Refugees, Bosnia and Herzegovina, *Revised Core Document Forming Part of States Parties Bosnia and Herzegovina* (Sarajevo: 2010), 11, accessed February 10 2014, <http://www.mhrr.gov.ba/PDF/LjudskaPrava/common%20core%20document%20BH-rev-ENGLISH.pdf>.

28 UNHCR, *Handbook for Repatriation and Reintegration Activities* (Geneva: UNHCR, 2004), 5.

29 Alastair Ager and Alison Strang, “Understanding Integration: A Conceptual Framework,” *Journal of Refugee Studies* 21 (2008): 166–190, doi: 10.1093/jrs/fen016.

are visible overlaps between these definitions, and it can be argued that in order to achieve multi-ethnic political units, the facilitation of the components in Ager and Strang's framework is crucial.

### Reintegration in Practice

An important point to make when establishing the extent of minority returns and reintegration in Bosnia and Herzegovina is that the official minority return figures are acknowledged to not be completely accurate. According to the International Crisis Group, "large numbers of returnees reportedly fail to register with local municipal or cantonal authorities because they want to maintain their pensions or health benefits in the places from which they have returned, because they have gone home only provisionally or part-time, or because they do not trust the local authorities."<sup>30</sup> The lack of a complete data set due to unregistered return is more than just a methodological issue, as it also shows an unwillingness by minority returnees to integrate through participation in local political institutions for a variety of economic and security related reasons. Although this means that the number of physical returns could be higher than recorded, the lack of participation fails to change the ethnic composition of governance at the municipal level, and challenges the hope that an increase in minority return rates would increase the heterogeneity of political institutions at multiple levels of governance.

The reasons attributed by the ICG for failure to register as a returnee all fall into various requirements of integration as proposed by Ager and Strang's framework. Regarding safety, despite a vast improvement in the security situation from the immediate period after the war, returnees are still vulnerable to targeted violent crime and intimidation from local ethno-nationalists.<sup>31</sup> Even if the threat of violent intimidation is low, in many locations "returnees are reminded of their second class status as "minority returnees" and not as ordinary pre-war residents of their own home towns."<sup>32</sup> Additionally, there are some cases of wartime ethno-nationalist actors retaining positions in local authorities,<sup>33</sup> which does not signal to displaced individuals that their safety will not be compromised, and thus discourages sustainable return. This

30 International Crisis Group, "The Continuing Challenge of Refugee Returns in Bosnia and Herzegovina," 4.

31 Ibid., 8.

32 Gearóid Ó Tuathail and John O'Loughlin, "After Ethnic Cleansing: Return Outcomes in Bosnia-Herzegovina a Decade Beyond War," *Annals of the Association of American Geographers* 99 (2009): 1052, doi: 10.1080/00045600903260671.

33 Brubaker, "From the unmixing to the remixing of peoples: UNHCR and minority returns in Bosnia," 4.

particular factor demonstrates how the refugee return process is interlinked with wider problems in the post-conflict state, in this case, the issue of accountability and retributive justice.

Attempts to encourage return through another aspect of the framework, housing, has already been mentioned, namely with the PLIP. In the case of property restitution, the initiative was highly successful, as it is estimated that over 99% of the cases were completed by 2006, and had enabled the owners of over 197, 815 properties to be granted restitution.<sup>34</sup> However, although the legislation is deemed to have facilitated minority returns which may otherwise could not have happened, property repossession has also been conducted in order to sell or exchange for new life in majority areas or abroad, and therefore has, in some cases, made it more advantageous for displaced persons not to return to their places of origin.<sup>35</sup> Therefore, although the PLIP can be understood as an important institutional implementation for the provision of human rights, and of refugee choice,<sup>36</sup> it has struggled to lead to sustainable minority returns that it was hoped the legislation would achieve.<sup>37</sup>

The practice of partial return is another rationale for not registering as returnee, and it can be understood as a failure to achieve integration in several spheres of Ager and Strang's framework, such as employment and health. Despite material incentives in the housing sphere such as the PLIP, some displaced persons, particularly those who received refugee status and support abroad, see partial return as more beneficial, as they can continue to receive financial benefits from their host country. Meanwhile, refugees who commit to full, permanent return and renounce their claim to rights within their host-country face limited access to benefits, healthcare, and support from local authorities within the Bosnian state, which is economically crippled by the effects of slow post-conflict reconstruction and mass privatisation of a formerly socialist system.<sup>38</sup> The precariousness of the economic situation in Bosnia and Herzegovina has also led to an intergenerational partition of return, with younger IDPs staying "in their place of displacement seeking education, social

34 Ministry for Human Rights and Refugees, Bosnia and Herzegovina, *Revised Core Document Forming Part of States Parties Bosnia and Herzegovina*, 11.

35 Patricia Weiss Fagen, "Refugees and IDPs after Conflict: Why They Do Not Go Home," *United States Institute of Peace Special Report*, No. 268 (April 2011): 5, <http://www.usip.org/sites/default/files/SR268Fagen.pdf>.

36 Rhodri C. Williams, "Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice," *New York University Journal of International Law and Politics* 37 (2004–2005): 441–551.

37 Huma Haider, "The Politicisation of Humanitarian Assistance: Refugee and IDP Policy in Bosnia and Herzegovina," *The Journal of Humanitarian Assistance*, April 26, 2010, <http://sites.tufts.edu/jha/archives/700>.

38 Laura Huttenen, "Sedentary Policies and Transnational Relations: A 'Non-sustainable' Case of Return to Bosnia," *Journal of Refugee Studies* 23 (2010): 41–61, doi: 10.1093/jrs/feq002.

and economic opportunities that are scarcer in their communities of origin.”<sup>39</sup> Partial return can also describe the occurrence of minority returnee enclaves, whereby individuals return in large numbers to their pre-war municipalities, and yet occupy accommodation in areas where they are among other members of their ethnic group, thus contributing to heterogeneous political units but remaining geographically separate at the local level. Minority enclaves also can be non-spacial, as some returnees occupy their pre-war housing and contribute demographically to heterogeneous communities, but rarely venture into central public spaces, which are now interpreted as under ethno-federal control, and conduct their everyday business through parallel minority structures.<sup>40</sup>

These empirical examples of the realities and complexities of refugee return, and the lack of integration that has been achieved according to the conceptual framework, demonstrates that the ethno-federalism of the GFAP has hardly been reduced or rectified by the process of minority refugee returns. It also questions the abilities of consociational agreements to transition from the immediate conditions required for ending violence, and the eventual establishment of a multi-ethnic state. When examining lived experiences which result from normative institutional engineering, several observations emerge, regarding the paradoxes that international actors have faced when attempting to reverse ethnic cleansing through the minority returns process.

Whilst institutional engineering may have facilitated genuine and sustainable return for *some* individuals, prioritising the redress of restrictions present during the DPA negotiations over alternative options for displaced persons may have also been detrimental to other human rights of refugees. Normative support for the right to return to one’s home of origin is a positive legal development that has emerged from the Bosnian experience, but pursuing that option over more beneficial or suitable choices for the displaced, such as policies to support local integration in the place of refuge, or resettlement in a third country, is ethically problematic, and has resulted in unsustainable returns.<sup>41</sup> Additionally, the fervent pursuit of a dominant policy option for a normative goal raises concerns over the right of refugees to choose their preferred solution.<sup>42</sup>

39 UNHCR, quoted in Ó Tuathail and O’Loughlin, “After Ethnic Cleansing: Return Outcomes in Bosnia-Herzegovina A Decade Beyond War,” 13.

40 Stefansson, “Home in the Making: Property Restitution, Refugee Return, and Senses of Belonging in a Post-war Bosnia Town,” 116–137.

41 Brubaker, “From the unmixing to the remixing of peoples: UNHCR and minority returns in Bosnia,” 18.

42 Haider, “The Politicisation of Humanitarian Assistance: Refugee and IDP Policy in Bosnia and Herzegovina”.

This prioritisation of minority return as one of the most important ways to address the relationship between ethno-federalism and ethnic-cleansing in the DPA demonstrates institutional changes designed to facilitate reintegration can underestimate the complexity of the act of returning. Despite the implementation of the “Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement”<sup>43</sup> in 2010, many displaced persons still “believed return would actually increase their overall precariousness...if not for them, then at least for the next generation”<sup>44</sup>. The examples of failure to achieve durable integration in many of the sectors featured in this study highlight the complexities of refugee return, and support the assertion that a gap remains between the peace accord process, and the facilitation of post-conflict integration at an individual level.

## Conclusion

This article has explored the use of consociational ethno-federalism as a form of conflict management, and highlights the institutional conflict which emerges when ethno-federal territories are the legacy of ethnic cleansing. It has used the process of post-conflict minority refugee return to question the integrative engineering of political institutions used to counteract this constitutional dilemma, through the encouragement of heterogeneous demographic processes. The conclusion it draws is that although ethno-federalist consociationalist theory can provide tangible results in the immediate post-conflict period, challenges remain for the later transform society from one with deep divisions, to a multi-ethnic civic society.

Additionally, the case study analysis highlights important conflicts which exist in the DPA, as an example of a consociational ethno-federal arrangement. The first is that ethno-federal arrangements and the right to return to one's home of origin are incompatible in the case the Bosnian house war. Despite the number of registered returns, which are lauded as a success, the validity of these statistics cannot be taken at face value, and requires detailed examination of the sustainability and quality of these returns. The lack of widespread minority returns means that there has been a failure to reverse the results of ethnic cleansing and return to the demographic distribution of 1991. Thus institutions remain marginally affected by local democratic processes, as the participation of minority returnees in the political institutions of their place

43 Ministry of Human Rights and Refugees, Bosnia and Herzegovina, “Revised Strategy of Bosnia and Herzegovina for the Implementation of Annex VII of the Dayton Peace Agreement” (2010), accessed February 20 2014, <http://www.mhrr.gov.ba/PDF/Izbjeglice/Revidirano%20strategija%20Engleski.pdf>.

44 Stef Jansen, “The Privatisation of Home and Hope: Return, Reforms and the Foreign Intervention in Bosnia-Herzegovina,” *Dialectical Anthropology* 30 (2006): 192, doi: 10.1007/s10624-007-9005-x.

of origin remain minimal. Another conflict that the DPA struggles with is that the right to, and process of, return does not necessarily result in reintegration. Annex VII has been enacted and interpreted by thousands of displaced persons in a variety of ways, but few of these have been in the manner of which it was envisioned.

This conclusion highlights a critical juncture in the study of consociationalism, ethno-federalism, and integration as practised approaches to conflict management, which is where this leaves approaches to refugee returns and post-conflict governance. In the Bosnian case, the current number of returns is unlikely to dramatically change due to the length of time that has passed, as those who chose to integrate in their locations of refuge rather than return to their place of origin have established new lives and structures which they are unlikely to abandon in exchange for the physical, social, and economic insecurity of returning. However, there are still important questions to ask regarding the future of those who remain permanently displaced in IDP centres, especially as time passes and the attention on resolving refugee issues becomes less of a priority for governments and international actors. The civic unrest across Bosnia and Herzegovina in early 2014 sparked critical conversations about the nature and structure of the post-Dayton state, and focused on many of the issues discussed in this article, namely the economic condition of the country and the precarious situation that many Bosnians, both sedentary and displaced face. Although the energy of the protests has since waned, this was a surprise challenge to the consociational ethno-federal model utilised in the DPA, which could have consequences for the way the Bosnian state is structured. In the meantime, scholars of high institutional theory and policymakers should examine the realities of the refugee experience in Bosnia and Herzegovina as a challenge to the belief that the re-integrations of displaced persons can effectively reverse boundaries settled in peace agreements.

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## Резиме

Лора Вајз

### Уставни парадокс: етно-федерални консоцијанизам и повратак избеглица у постдејтонској Босни и Херцеговини

**Кључне речи:** консоцијанизам, етно-федерализам, повратак избеглица, Босна и Херцеговина, Дејтонски мировни споразум, управљање сукобима, реинтеграција, пост-конфликт

Мировни споразум којим је окончан сукоб у Босни и Херцеговини је 1995. године постао један од најновијих примера употребе консоцијацијске теорије као метода управљања сукобима у дубоко подељеним друштвима. Ослањајући се на рад Аренда Лајпхарта, Дејтонски мировни споразум установио је уставни дизајн будуће државе, заснован на идеји да је међуетничка сарадња највероватнија унутар етно-федералног договора о дељењу моћи. Овај текст испитује парадокс између установљења етно-федералних интитета, као консоцијацијског захтева постконфликтне Босне и Херцеговине, и суштинске важности повратка избеглица у области које су биле мултиетничке пре рата, о чему се говори у седмом анексу Општег оквирног споразума за мир у Босни и Херцеговини. Уместо пуког заступања интегративног институционалног дизајна као алтернативног решења, искуства мањинских повратника у Босни и Херцеговини наглашавају проблематичну везу између свакодневних ситуација у којима се налазе расељена лица и примене високопарне политичке теорије. У овом се тексту тврди да је стварност повратка избеглица у Босну и Херцеговину мало тога учинила како би оспорила етно-федералистичке карактеристике Општег оквирног споразума, те да зато није испунила очекивања оних који настоје да успешно остваре поновно мешање етничких група.

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